

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

MITZI BICKERS

Criminal Action No.

1:18-CR-098-SCJ-LTW

**UNITED STATES' RENEWED MOTION TO ADMIT BUSINESS
RECORDS PURSUANT TO FED. R. EVID. 902(11) AND 803(6)**

The United States of America, by Byung J. Pak, United States Attorney, and Kurt R. Erskine, Jeffrey W. Davis, Assistant United States Attorneys for the Northern District of Georgia, files this Motion to Admit Business Records at trial.

Federal Rule of Evidence 803(6) excepts certain records from the hearsay rule and allows admission of business records without a live witness if, in part: the record was made at or near the time of the event by, or from information transmitted by, someone with knowledge; the record was kept in the course of a regularly conducted business activity; the record was made as a regular business practice; and the preceding conditions are shown by a certification that complies with Rule 902(11). FED. R. EVID. 803(6). Under Rule 902(11), business records are self-authenticating, but the opposing party must be given “reasonable written notice” and an opportunity to inspect the certification and related records. FED. R. EVID. 902(11); *U.S. v. Lezcano*, 296 F. App’x 800, 808 (11th Cir. 2008) (business records were properly admitted without a live witness where the government complied with Fed. R. Evid. 803(6) and 902(11)).

Background and Analysis

On November 9, 2018, the United States provided written notice to Defendant of its intention to authenticate documents through business record certifications. Those certifications, along with the underlying records, are from business and government entities, and have been provided in discovery. The certifications also comport with Rule 902(11).

In subsequent communications with the defense, the United States has offered the opportunity to inspect the original documents and certifications. The records are from well-established businesses and financial institutions. *See* Exhibit A to this Motion. After conferring with counsel for the Defendant, the Defendant will not object to admission of the documents listed in Exhibit A as business records pursuant to Fed. R. Evid. 803(6) and 902(11). The Defendant reserves the right to object at trial to their admission on other evidentiary bases, such as relevance, if appropriate.

Similarly, the Defendant has represented that she does not object to the admission of documents provided to the Grand Jury by the Bickers Group, Inc., the Bickers Group, LLC, Pirouette, Inc. and Pirouette Strategies pursuant to Fed. R. Evid. 803(6) and 902(11). These document were provided in discovery and bear Bates prefixes BICKERSEMAILS, BICKERS-GROUP, BICKERS-GROUP-LLC, BICKERS-GROUP-INC, PIROUETTE, PIROUETTE-JACKSON, PIROUETTE-JACKSON-MS. The Defendant, however, reserves the right to object at trial to their admission on other evidentiary bases, if appropriate.

Conclusion

The United States, therefore, moves the Court for the preliminary admission of the records listed in Exhibit A at trial under Fed. R. Evid. 803(6) and 902(11) as business records, subject to the Defendant's right to object on other evidentiary bases, if appropriate. Admitting these records under Fed. R. Evid. 803(6) and 902(11), as opposed to a live witness for each entity, will greatly expedite the presentation of evidence at trial, saving valuable judicial resources.

Respectfully submitted,

BYUNG J. PAK

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CERTIFICATE OF SERVICE

The United States Attorney's Office served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record, including:

Drew Findling, Esq.

Marissa Helene Goldberg, Esq.

Dated: March 5, 2020.

/s/

KURT R. ERSKINE

Assistant United States Attorney